

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP
ECODIESEL MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

No. 3:17-md-02777-EMC

**[PROPOSED] PRETRIAL ORDER NO. 16
STIPULATION AND ORDER GOVERNING
THE PRODUCTION OF HARD COPY
DOCUMENTS AND ELECTRONICALLY
STORED INFORMATION**

The Honorable Edward M. Chen

WHEREAS, pursuant to Pretrial Order No. (“PTO”) 3 (Docket No. 173) and Amended PTO 12 (Docket No. 227) the Plaintiffs’ Steering Committee, on behalf of the consumer and reseller dealer class plaintiffs, the United States Department of Justice, on behalf of the United States Environmental Protection Agency (“United States”), and counsel for Defendants FCA US LLC, Fiat Chrysler Automobiles N.V., V.M. Motori S.p.A., V.M. North America, Inc., Sergio Marchionne, Robert Bosch GmbH, and Robert Bosch, LLC (collectively, “Defendants”), (jointly, “the Parties¹”) are required to submit to the Court a joint proposed order governing protocols to be followed regarding electronically stored information (“ESI”);

¹ All defined terms herein are the same as those used in Pretrial Order No. 10: “Stipulated Protective Order” (Docket No. 212) (“PTO 10”), unless otherwise noted.

1 WHEREAS, the Parties mutually seek to reduce the time, expense, and other burdens
 2 associated with discovery, and to better define their obligations with respect to such information
 3 and materials; and

4 WHEREAS, the Parties, having met and conferred, submit this *Stipulation and*
 5 *[Proposed] Order Governing the Production of Hard Copy Documents and Electronically Stored*
 6 *Information* (the “Order”), and respectfully request that the Court enter it as an Order;

7 NOW THEREFORE, it is hereby STIPULATED and ORDERED:

8 **I. PURPOSE AND SCOPE**

9 **A. General.** This Order governs the production of hard copy documents and ESI by
 10 the Parties in this Action. This Order does not supersede prior Pretrial Orders issued in this
 11 Action, which will remain in effect except to the extent inconsistent with the provisions herein.

12 **B. Scope.** Nothing in this Order is intended to be an exhaustive list of discovery
 13 obligations or rights of the Party producing Discoverable Information (“Producing Party”) or a
 14 Party requesting Discoverable Information (“Requesting Party”), or any other Party or Non-Party.
 15 To the extent additional obligations or rights not addressed in this Order arise under the Federal
 16 Rules of Civil Procedure, local rules, or applicable state and federal statutes, they will control.

17 **C. Limitations and Non-Waiver.** The Parties and their attorneys do not intend by
 18 this Order to waive their rights to any protection or privilege, including the attorney-client
 19 privilege and work product doctrine, or their rights to object to any discovery requests.

20 **D. Variations.** In light of the varying and disparate data systems and architectures
 21 employed by the Parties, variation from this Order may be required. In the event that any Party
 22 identifies a circumstance where application of this Order is not technologically possible or
 23 reasonably practicable, the Producing Party will disclose to the Requesting Party the reason(s)
 24 for, and circumstances surrounding, the need to vary from this Order, and the Parties will meet
 25 and confer in an effort to reach agreement on an appropriate deviation from this Order. In the
 26 event that the Parties cannot reach agreement, the matter may be submitted to the Court for
 27 determination.
 28

1 **II. COOPERATION**

2 The Parties are aware of the importance the Court places on cooperation and commit to
3 cooperate in good faith throughout the matter consistent with this Court's Standing Order on
4 Discovery.

5 **III. REGULATORY PRODUCTIONS**

6 In this litigation, Defendants FCA US LLC, Fiat Chrysler Automobiles N.V., V.M.
7 Motori S.p.A., V.M. North America, Inc., and Sergio Marchionne (collectively, "FCA
8 Defendants") are producing to the non-government plaintiffs documents that were previously
9 produced to regulatory entities as part of regulatory processes (the "Reproductions"). Nothing in
10 this order is intended to impose new or additional obligations on the FCA Defendants with
11 respect to the format of the Reproductions or productions of documents that have already been
12 collected and processed, so long as those productions substantially comply with Sections V and
13 VI herein, including the production of native files. In the event of a conflict about whether such
14 productions substantially comply with Sections V and VI, the Parties will meet and confer in an
15 effort to reach agreement. In connection with any such obligation to meet and confer, the Parties
16 will discuss any need for changes to the format of productions weighed against the practicality
17 and cost to the Producing Party of implementing such changes.

18 **IV. IDENTIFICATION AND COLLECTION PROTOCOL FOR ESI**

19 Except as provided in Section III (Regulatory Productions), for all document productions
20 in connection with this Action:

21 **A.** The Parties shall meet and confer in an effort to agree upon the following: (a)
22 custodial and non-custodial sources from which Documents and ESI will be obtained for
23 production; (b) search methodology and search terms, if any, to be applied, or other search,
24 filtering, or classification technologies; (c) location(s) and description(s) of relevant data sources
25 including custodial, non-custodial, and third-party Documents; and (d) applicable timeframe(s)
26 for collection and review of Documents and ESI.

27 **B.** In processing ESI, the Parties agree to the following approaches:
28

- 1 1. De-duplication: The Parties will use commercially acceptable methods (e.g., MD5
2 or SHA-1 hash values) to identify duplicate ESI and globally de-duplicate ESI. In
3 the case of emails, the hash value must be calculated on the concatenated value of
4 the following fields: to, from, cc, bcc, date sent, email subject, full body of the
5 email; additionally, at a Party's option, the fields upon which hash values may be
6 calculated may also include the "attachment count" field. Family groups, e.g., an
7 email and its attachments, must be de-duplicated only against other family groups
8 as entities, e.g., using hash values calculated on concatenations of the hash values
9 of all family members, and no document which is not part of a family group shall
10 be de-duplicated against a member of a family group. The metadata provided by
11 the Parties other than the United States for the produced version of each document
12 withheld as a duplicate must include the following information for each such
13 withheld document: Duplicate Custodians, Duplicate Custodians Directory Path,
14 and Duplicate Custodians Folder Path. The Defendants will continue to meet and
15 confer with Plaintiffs regarding the inclusion of a Duplicate Custodians File Name
16 field. The metadata provided by the United States for the produced version of each
17 email withheld as a duplicate will include the Duplicate Custodians; the metadata
18 provided by the United States for the produced version of all non-email ESI must
19 include the Duplicate Custodians, Duplicate Custodians File Name, and Duplicate
20 Custodians Directory Path. The Parties, in each production made pursuant to the
21 Order, must produce overlays updating the foregoing metadata to reflect updates to
22 the designated metadata fields in that production.
- 23 2. De-NISTing: Electronic files will be De-NISTed, removing commercially
24 available operating system and application file information contained on the
25 current NIST file list. If a Producing Party proposes to apply additional filters that
26 identify common system files, non-user generated files, and/or zero-byte files (*i.e.*
27 computer files containing no data), the Producing Party will provide details to the
28 Parties regarding the filters, how they work, and what impact (if any) they will

1 have on the collections or productions. No later than five (5) days after such
2 disclosure, the Parties will meet and confer in an effort to reach agreement on any
3 additional filters. In the event that the Parties cannot reach agreement, the matter
4 may be submitted to the Court for determination.

- 5 3. Relevant Time Frame/Date: The Parties may limit processing of Documents to that
6 which was created, modified, sent, or received between certain dates as agreed by
7 the Parties, or set forth by the Court.

8 **C. Continuing Obligations.** The Parties will continue to meet and confer regarding
9 any issues as necessary and appropriate, including issues relating to modification of any of the
10 dates and time-frames set forth in this Order. This Order does not address or resolve any
11 objections to the scope of the Parties' respective discovery requests.

12 **D. Reservation of Rights.** The Parties retain the right, upon reviewing any
13 productions made by another Party in this Action or conducting other investigation and discovery,
14 to request that Documents from additional non-custodial data sources and custodians be
15 produced. The Parties will meet and confer regarding such request(s) prior to any search or
16 production related thereto.

17 **E. Known Responsive ESI Must Be Produced.** ESI that is known to a Party to be
18 responsive to a discovery request or relevant to the subject matter of this action may not be
19 withheld on the grounds that it was not identified as responsive by the protocol described in, or
20 developed in accordance with, this Order.

21 **F. Unsearchable Documents.** Documents for which text-based search technologies
22 are fundamentally ineffective, such as images or hard copy documents, must be reviewed without
23 culling by search terms, predictive coding, or other technologies that rely primarily on text. The
24 Parties will meet and confer regarding the issue of whether text-based search technologies are
25 fundamentally ineffective for spreadsheets. Prior to the production of such unsearchable items,
26 the Producing Party may conduct a page-by-page review for responsiveness, confidentiality,
27 privilege, and other protections. With agreement of the Receiving Party, a Producing Party, in
28 good faith, may elect to use statistical sampling techniques to determine whether to review

1 discrete, identified populations of unsearchable documents for responsiveness, confidentiality,
2 privilege, and other protection. In the event that the Parties cannot reach agreement, the matter
3 may be submitted to the Court for determination.

4 **G. Technologies.** The Parties will meet and confer to disclose and discuss their use
5 and proposed further use of software or other technologies to exclude or eliminate sources of
6 potentially responsive documents, including keyword or Boolean searching, file type culling, de-
7 duplication, filtering, predictive coding, near de-duplication, e-mail thread suppression, clustering
8 or concept searching, and the validation processes and standards for such uses. If the Parties are
9 unable to agree on a protocol for the use of such technology after meeting and conferring in good
10 faith, the Parties will notify, and seek resolution from, the Court

11 **H. Custodian Identified Files.** Discrete folders or collections of Documents that are
12 identified by a custodian as likely to be responsive must be collected without the use of search
13 terms or any other content-based filtering to cull or limit the scope of Documents from the
14 discrete set or grouping.

15 **I. Review of Discrete Collections.** Notwithstanding a Party's awareness that a
16 discrete collection is likely to contain responsive information, a Producing Party may, in good
17 faith, review the contents of any such discrete collection for responsiveness, confidentiality,
18 privilege, or other protection(s) from disclosure or production.

19 **J. Reassessment.** After the completion of the search methodology meet and confer
20 sessions, a Producing Party may encounter the need to reassess a search methodology and/or
21 validation process and, in such case, the Producing Party will notify the Requesting Party and the
22 Parties will meet and confer to address any issues in a reasonable and timely manner.

23 **K. Good faith.** The Parties will act in good faith and use these procedures to identify
24 and reduce the potential for disputes that may arise in connection with the search and/or review
25 methodologies selected by the Producing Party.

26 **V. PRODUCTION OF HARD COPY DOCUMENTS**

27 Compliance with the procedures set forth below will constitute compliance with Federal
28 Rule of Civil Procedure 34(b)(2)(E).

1 **A.** Responsive documents must be produced as single page, Group IV, 300 DPI TIFF
2 format following the same protocols set forth herein if the documents: (i) were originally
3 generated as or converted into ESI but now only exist in physical hard copy format, (ii) are
4 printed ESI that contains new alterations since printed (*i.e.*, handwritten notes), or (iii) originally
5 were generated in hard-copy format. Each page must be branded with a unique Bates number,
6 which may not be an overlay of the image. The images must be accompanied by: (1) an
7 Opticon™ or IPRO® “cross reference file” which associates each Bates number with its
8 corresponding single-page TIFF image file; (2) a data load file containing Concordance®
9 delimited text that will populate fields in a searchable flat database environment, containing one
10 line for each document and each of the applicable fields as described in Appendix A, (a “Data
11 Load File”), which will include the relative path to the text file for that document on the
12 production media.

13 **B.** The Parties will use best efforts to unitize documents (*i.e.*, distinct documents
14 should not be merged into a single record, and a single document should not be split into multiple
15 records), and maintain document relationships (*i.e.*, attachment status).

16 **C.** If an original document being produced as an electronic image contains color, the
17 document must be produced in color as a single page, 300 DPI JPG images with JPG compression
18 and a high-quality setting (so as to not degrade the original image), but only to the extent such a
19 requirement to produce color images does not require the Producing Party to re-collect or re-scan
20 documents that already have been collected and scanned. Notwithstanding the requirements set
21 forth in the preceding sentence, if a Requesting Party has received an image in black and white
22 and believes in good faith that color is important to interpreting the document, upon written
23 request by the Requesting Party, the Producing Party will take good faith measures to produce the
24 image in color. The Parties will meet and confer concerning any disputes over such requests.
25 The Parties reserve the right to revisit their agreement to this paragraph if Defendants’
26 productions reveal a large number of black and white documents, where color appears to be
27 important in order to interpret or understand the document.
28

1 **D.** Optical Character Recognition (“OCR”) text for each document must be provided
 2 as a single file and named with the Bates number of the first page of the document to which it
 3 corresponds. The OCR software must be set to the highest quality setting. Documents containing
 4 foreign language text must be OCR’ed using the appropriate settings for that language, (*e.g.*,
 5 OCR of German documents must use settings that properly capture umlauts). Scanned copies of
 6 paper documents must be subject to quality control measures to ensure the integrity of the image
 7 is preserved for OCR (*e.g.*, pages are not angled or skewed, text is not blurred or obscured, etc.).
 8 Settings such as “auto-deskewing” and “auto-rotation” must be used when appropriate during the
 9 OCR process to maximize text recognition on any given page. Documents that are redacted will
 10 be re-scanned using OCR software following redaction and only the OCR text of the non-
 11 redacted portions will be produced.

12 **E.** A delimited text file that contains available fielded data must also be included and
 13 at a minimum provide Beginning Bates Number, Ending Bates Number, Beginning Attachment
 14 Number, Ending Attachment Number, Custodian, and Number of Pages. The delimiters for that
 15 file should be:

16 Field Separator, ASCII character 20: “**¶**”
 17 Quote Character, ASCII character 254 “**”**”
 18 Multi-Entry Delimiter, ASCII character 174: “**®**”

19 **F.** To the extent it exists at the time of production, identification of any objective
 20 coding for any hard copy documents must also be provided.

21 **VI. PRODUCTION OF ESI**

22 Compliance with the procedures set forth below will constitute compliance with Federal
 23 Rule of Civil Procedure 34(b)(2)(E).

24 **A. Form of Production.** Except as otherwise provided in this paragraph, production
 25 of all non-redacted ESI, with the exception of Microsoft Excel files and nonprintable files, must
 26 include single-page Bates-stamped TIFF images, each accompanied by a load file with fielded
 27 data, a .txt file containing extracted text or OCR Text, and an image load file for the TIFFs.
 28 Except for the United States, the Parties must produce all non-redacted files in native format. The

United States must produce non-redacted Microsoft PowerPoint, Excel, and Word files and non-printable files in native format. All images of redacted Microsoft Word documents and PowerPoint presentations must be processed to show and reveal all comments, revision marks, speaker notes, or other user-created data that the source application can display to a user. Non-redacted Microsoft Excel files and nonprintable files must be produced in native format only, with one page placeholder TIFF image for each file, as set forth in Section VI.D below. Redacted ESI must be produced as TIFF images, accompanied by a load file with fielded data, a .txt file containing OCR'ed text, and an image load file for the TIFFs. Except for image files embedded in emails collected after the date of filing of this Order (which must not be produced as separate attachments), any document embedded in a produced document (*e.g.*, an Excel file embedded in a PowerPoint file) must be produced separately as an attachment. Notwithstanding the forgoing, the production of structured and handheld data as identified and described in Sections VI.O and VI.P must be made in accordance with the agreement of the parties contemplated by those sections.

B. Document Image Format. Except as otherwise provided, all non-native black and white images must be produced as single-page, Group IV, 300 DPI TIFFs. For all productions by the FCA Defendants in *United States v. Fiat Chrysler Automobiles N.V., et. al*, No. 3:17-cv-03446-EMC, if images are provided for an original document that contains color, the images will be provided as single page, 300 DPI JPG images with JPG compression and a high-quality setting (so as to not degrade the original image), but only to the extent such a requirement to produce color images does not require a Producing Party to re-produce the Reproductions, defined in Section III (Regulatory Productions) herein. Notwithstanding the preceding, if a Requesting Party has received an image in black and white and believes in good faith that color is important to interpreting the document, upon written request by the Requesting Party, the Producing Party will take good faith measures to produce the image in color. The Parties agree to meet and confer concerning any disputes over such requests. The Parties reserve the right to revisit their agreement to this paragraph if Defendants' productions reveal a large number of

1 black and white documents and color appears to be important in order to interpret or understand
2 the documents.

3 **C.** E-mail and attachments will be produced according to the specifications in
4 subparagraph VI.A, above. If the Producing Party redacts any part of the e-mail before producing
5 it, OCR text should be provided in place of extracted text. E-mail attachments must be processed
6 as though they were separate documents, and the Data Load File must include a field in which the
7 Producing Party identifies, for each e-mail, the Bates range of any attachments.

8 **D.** Native files will be produced in a separate folder on the production media. The
9 Data Load File must contain a field that identifies the file path of the native file corresponding to
10 each document. For each non-redacted Microsoft PowerPoint and Word file, the United States
11 must produce the native file in addition to a Bates-stamped TIFF image. Defendants and
12 Plaintiffs other than the United States must produce each non-redacted file as a native file in
13 addition to a Bates-stamped TIFF images. For non-redacted Microsoft Excel files and non-
14 printable files, the TIFF image must be a one page placeholder that shows: (a) the name of the
15 native file, (b) a unique Bates number, and (c) a Confidentiality Designation.

16 **E.** With the exception of image files embedded in emails and not produced
17 separately, embedded files must be treated as though they were separate files, except that the
18 Bates range of the parent document and the documents embedded therein must be identified in the
19 same manner as the Bates range of an e-mail attachment.

20 **F.** Before any Party produces any other kind of electronic data, including data from
21 databases, CAD drawings, GIS data, videos, etc., the Parties will meet and confer to determine a
22 reasonably useable form for the production.

23 **G. Text Files.** For each document, a single text file must be provided along with the
24 image files and the metadata discussed in Section VI.M. The text file name must be the same as
25 the Bates number of the first page of the document. File names may not have any special
26 characters or embedded spaces. Electronic text must be extracted directly from the native
27 electronic file unless the document requires redaction, is an image file, or is any other native
28 electronic file that does not contain text to extract (*e.g.*, non-searchable PDFs). In these instances,

1 a text file must be created using OCR and may be produced in lieu of extracted text. Extracted
2 text must be provided in UTF-8 text format.

3 **H. Redactions.** In situations where redaction of information is required, such
4 redactions must be made in a way that ensures the integrity of the remaining text is preserved for
5 OCR (*e.g.*, redactions must not obscure non-redacted text). Any redactions must be clearly
6 visible on the face of the produced document (*e.g.*, the Parties must use black, not white, to make
7 redactions on documents with a white background). Redactions must be applied as set forth in
8 PTO No. 13. Notwithstanding the preceding, if a Requesting Party has received a redacted non-
9 native document and believes in good faith that the redacted native file is important to
10 interpreting the document, upon written request by the Requesting Party, the Producing Party will
11 take good faith measures to produce the redacted native file in an acceptable format. The Parties
12 agree to meet and confer concerning any disputes over such requests.

13 **I. Document Unitization.** For files produced as TIFF images, each page of a
14 document must be electronically saved as an image file. If a document consists of more than one
15 page, the unitization of the document and any attachments must be maintained as it existed in the
16 original when creating the image files. The Parties must produce a unitization file ("load file")
17 for all produced documents in accordance with the following formatting:

18 **OCR and Extracted Text Files (.TXT Files):**

- 19 • Single text file per document containing all of the document's pages
- 20 • Filenames should be of the form:

21 <Bates num>.txt

22 Where <Bates num> is the BATES number of the first page in the document.

- 23 • Text must be encoded in UTF-8.

Image Files:

- Single page per image
- TIFF is Group IV compression, 300 dpi unless color or grayscale image is necessary, then .JPG would be acceptable
- Filenames should be of the form:
“<Bates num>.<ext>,” where <Bates num> is the BATES number of the page, and
<ext> is the appropriate extension for the image format (.jpg, .tif).

Index Files:

- “Concordance Default” delimited text file utilizing the following characters:
 - The “comma” delimiter is “¶” (020)
 - The “quote” delimiter is “p” (254)
 - The “new line” delimiter is “®” (174)
- First line must contain the column/field names (set forth in Paragraph 1(c) herein)
- Every row must have the same number of columns/fields (empty values are acceptable)
- Text must be encoded in UTF-8

The Parties agree to meet and confer to discuss all unitization file/load file specifications, if needed.

J. Bates Numbering and Other Unique Identifiers. For files produced as TIFF images, each page of a produced document must have a legible, unique page identifier (“Bates Number”) electronically burned onto the TIFF image in such a manner that information from the source document is not obliterated, concealed, or interfered with. There may be no other legend or stamp placed on the document image unless a document (i) qualifies for confidential treatment pursuant to PTO 10, or any other protective order entered by this Court in this Action, or (ii) has been redacted in accordance with applicable law or other court order (including any protective order), entered by this Court or any other court. In the case of Confidential or Highly Confidential Information, as defined in PTO 10, or materials redacted in accordance with applicable law or other order (including any protective order) entered by this Court or another court, (1) a designation may be burned onto the document’s image at a location that does not obliterate or obscure any non-redacted information from the source document, and (2) for image

1 files, the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER (MDL 2777)” or
 2 “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER (MDL 2777)” must be
 3 branded onto each image (as opposed to an overlay), and must be positioned to avoid obscuring
 4 parts of the image that are not blank. The Parties acknowledge that the withholding of irrelevant
 5 or privileged documents could result in gaps in the sequence of Bates numbers.

6 **K. Production Media.** Documents must be produced on CD-ROM, DVD, external
 7 hard drive (with standard PC-compatible interface), or such other readily accessible computer or
 8 electronic media or via sFTP as the Parties may hereafter agree upon (the “Production Media”).
 9 The Parties must accompany all document productions with a letter identifying the production
 10 date and the Bates number range of the materials contained on such Production Media item.

11 **L. Metadata.** With each produced ESI file, the Parties must produce each of the
 12 applicable metadata fields described in Appendix A (to the extent available and technically
 13 achievable). The metadata must be produced in the following format: (1) an Opticon™ or
 14 IPRO® “cross reference file” which associates each Bates number with its corresponding single-
 15 page TIFF image file; and (2) a Data Load File containing Concordance® delimited text that will
 16 populate fields in a searchable flat database environment, containing one line for each document
 17 and each of the applicable fields as described in Appendix A. Unless otherwise specified, by
 18 producing metadata, each Party affirms that such metadata will come from its records, with the
 19 exception of vendor-entered source/Custodian and document/production number fields. Nothing
 20 in this stipulation requires a Party to manually populate a metadata field in Appendix A (other
 21 than Custodian and MD5Hash) if such fields cannot be extracted from a document, provided that
 22 the Parties agree to comply with reasonable requests for metadata that cannot be extracted from a
 23 document. For the avoidance of doubt, nothing in this Order acts as a waiver of any objection
 24 that may exist to the production of such data.

25 **M. Attachments.** Attachments must be mapped to their parent(s) by the Attachment
 26 Range. If a parent email or one of its attachments is produced, all members of its family, except
 27 for privileged documents, and associated text and metadata, must be produced.
 28

1 **N. Structured or Aggregated data – Databases, Enterprise Systems, and Third**
 2 **Party Cloud Systems.** The Parties will meet and confer to address the identification, production,
 3 and production format of any responsive data contained in a database, other structured or
 4 aggregated data source, or third party cloud-based storage system. Prior to any such meet and
 5 confer, the Producing Party(ies) will provide sufficient information to enable the Requesting
 6 Party(ies) to evaluate the Producing Party’s proposed method and format of production. In the
 7 event that the Parties cannot reach agreement, the matter may be submitted to the Court for
 8 determination.

9 **O. Mobile and Handheld Device Documents and Data.** The Parties will meet and
 10 confer to address the preservation, identification, production, and production format of any
 11 unique responsive documents and data contained on any mobile or handheld device, including
 12 responsive email, documents, application data, text files, voice mail, audio files, other text-based
 13 and image-based information and messages contained on such devices. In the event that the
 14 Parties cannot reach agreement, the matter may be submitted to the Court for determination.

15 **P. Non-English Documents.** The Parties must produce any English translations of
 16 Non-English documents made in the normal course of business. The Parties are not required to
 17 produce documents translated at the request of counsel. The Parties will meet and confer
 18 concerning procedures for using documents translated at the request of counsel in depositions and
 19 at trial. In the event that the Parties cannot reach agreement, the matter may be submitted to the
 20 Court for determination.

21 **VII. ENCRYPTION**

22 To maximize the security of information in transit, any media on which Documents are
 23 produced may be encrypted by the Producing Party. In such cases, the Producing Party will
 24 transmit, under separate cover, the encryption key or password to the Receiving Party or Parties.

25 **VIII. EXCEPTION FILES**

26 The Parties will use reasonable efforts and standard industry practices to address
 27 Documents that present imaging or form production problems (including encrypted and/or
 28 protected files identified during the processing of ESI) (“Exception Files”). The Parties will meet

1 and confer regarding procedures that will be used to identify, access, and process Exception Files.
 2 In the event that the Parties cannot reach agreement on the handling of Exception Files through
 3 the meet and confer process, the matter may be submitted to the Court for determination.

4 **IX. PROCESSING OF NON-PARTY DOCUMENTS**

5 **A.** A Party that issues a non-Party subpoena (“Issuing Party”) must include a copy of
 6 this Order with the subpoena and request that the non-Party produce documents in accordance
 7 with the specifications set forth herein.

8 **B.** The Issuing Party is responsible for producing to all other Parties any document(s)
 9 obtained pursuant to a subpoena to any non-Party in the form in which the document(s) was/were
 10 produced by the non-Party. To the extent practical given the data volume, productions by a non-
 11 Party should be produced by the Issuing Party to all other Parties within seven (7) calendar days
 12 of the non-Party’s production to the Issuing Party.

13 **C.** For the avoidance of doubt, nothing in this Order is intended to or should be
 14 interpreted as narrowing, expanding, or otherwise affecting the rights of the Parties or non-Parties
 15 to object to a subpoena.

16 **X. USE OF DOCUMENTS DURING LITIGATION**

17 **A. Preservation Does Not Affect Discoverability or Claims of Privilege.** Nothing
 18 in this Order affects the preservation requirements set forth in PTO 7. By preserving documents
 19 or ESI for the purpose of this litigation, the Parties are not conceding that such material is
 20 discoverable, nor are they waiving any claim of privilege.

21 **B. Other Preservation Obligations Not Affected.** Nothing in this agreement affects
 22 any other obligations of the Parties to preserve documents or information for other purposes, such
 23 as pursuant to court order, administrative order, statute, or in response to other anticipated
 24 litigation.

25 **XI. LIMITATIONS ON DISCOVERY**

26 **A. No Discovery of Material Not Required To Be Preserved.** Absent a showing of
 27 extraordinary circumstances, the Parties may not seek discovery of items that need not be
 28 preserved pursuant to the PTO 7. Any discovery request seeking such information must be

served separately from discovery requests seeking other materials and must include a statement showing good cause for the discovery of such materials, considering the limitation of Federal Rule 26(b)(2)(C). If any general discovery request is susceptible of a construction that calls for the production of items that need not be preserved pursuant to PTO 7, such items need not be searched for, produced, or identified on a privilege log pursuant to Fed. R. Civ. P. 26(b)(5).

B. Privileged Materials in the Custody of Counsel. The Parties will meet and confer and attempt to reach agreement concerning whether there is a need to collect, search, or produce documents in response to general discovery requests that are in the possession of outside counsel to the Parties.

XII. PRIVILEGED INFORMATION AND PREPARATION OF PRIVILEGE LOGS

Documents or Information subject to this Order that are subject to a claim of privilege will be treated in a manner consistent with PTO No. 13, unless otherwise noted.

XIII. MISCELLANEOUS PROVISIONS

A. The Parties will make good faith efforts to comply with and resolve any differences concerning compliance with this Order. No Party may seek relief from the Court concerning compliance with this Order unless it has first conferred with the other Parties.

B. Third Party Data. The Parties will meet and confer before serving any subpoenas in this matter on commercial e-mail providers, such as Google™ or Yahoo™, or any social media companies such as Facebook™ or Twitter™.

C. Effect of Order. The Parties' agreement to this Order is without prejudice to the right of any Party to seek an order from the Court to rescind or amend this Order for good cause shown. Nothing in this Order abridges the rights of any person to seek judicial review or to pursue other appropriate judicial action with respect to any discovery ruling made by the Court in this matter.

D. Additional Requests. The Parties reserve the right to propound additional Requests for Production that expressly require the production of certain categories of documents without relying on text-based search or classification technology.

1 **XIV. INTEGRATION/APPENDICES**

2 The following documents are incorporated herein by reference: "Appendix A" is a table
3 describing the fields to be included in the document productions by each Producing Party and
4 governed by this Order.

5
6 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
7

8 Dated: November 14, 2017

Respectfully submitted,

9 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

10
11 By: /s/ Elizabeth J. Cabraser

12 Elizabeth J. Cabraser

13 275 Battery Street, 29th Floor
14 San Francisco, CA 94111-3339
15 Telephone: (415) 956-1000
16 Facsimile: (415) 956-1008
17 ecabraser@lchb.com

18 *Plaintiffs' Lead Counsel and Chair of the Plaintiffs'*
19 *Steering Committee*

20 Dated: November 14, 2017

U.S. DEPARTMENT OF JUSTICE

21 By: /s/ Leigh P. Rendé

22 Leigh P. Rendé

23 United States Department of Justice
24 Environment and Natural Resources Division
25 Environmental Enforcement Section
26 P.O. Box 7611, Ben Franklin Station
27 Washington, DC 20044-7611
28 Telephone: (202) 514-1461
leigh.rende@usdoj.gov

Government Coordinating Counsel

1 Dated: November 14, 2017

SULLIVAN & CROMWELL LLP

2
3 By: /s/ Robert J. Giuffra, Jr.
Robert J. Giuffra, Jr.

4 Robert J. Giuffra, Jr.
5 William B. Monahan
6 Darrell S. Cafasso
Sullivan & Cromwell LLP
125 Broad Street
7 New York, New York 10004
Telephone: (212) 558-4000
8 Facsimile: (212) 558-3588
giuffrar@sullcrom.com
9 monahanw@sullcrom.com
cafassod@sullcrom.com

10 *Counsel for FCA US LLC, Fiat Chrysler Automobiles N.V.,*
11 *V.M. Motori S.p.A., V.M. North America Inc., and Sergio*
12 *Marchionne*

13 Dated: November 14, 2017

CLEARY GOTTlieb STEEN & HAMILTON LLP

14 By: /s/ Matthew D. Slater
Matthew D. Slater

15 Cleary Gottlieb Steen & Hamilton LLP
16 2000 Pennsylvania Ave., N.W.
Washington, DC 20006
17 Telephone: (202) 974-1500
18 Facsimile: (202) 974-1999
mslater@cgsh.com

19 *Counsel for Robert Bosch GmbH and Robert Bosch LLC*
20
21
22
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ATTESTATION (CIVIL LOCAL RULE 5-1(i)(3))

In accordance with Civil Local Rule 5-1(i)(3), I attest the concurrence in the filing of this document has been obtained from the signatories.

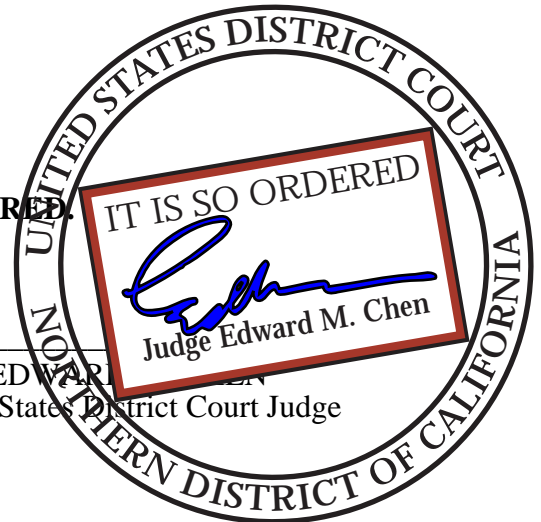
Dated: November 14, 2017

/s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: November 17, 2017

HON. EDWARD M. CHEN
United States District Court Judge



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 14, 2017, a true and correct copy of the foregoing was electronically filed and served electronically via the Court's CM/ECF system, which will automatically serve notice to all registered counsel of record.

By: /s/ Elizabeth J. Cabraser
Elizabeth J. Cabraser

APPENDIX A**FIELDS TO EXCHANGE**

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Bates Beg	Text	Bates number for the TIFF image of the first page.	Bates number for the TIFF image of the first page.	Bates number for the TIFF image of the first page, or, if spreadsheets/PowerPoints are not TIFFed, the Bates number of the placeholder page.	Bates number branded onto a .JPG file that has the same resolution as the native image file, or at high resolution.	Bates number for the TIFF image of the first page.
Bates End	Text	Bates number for the TIFF image of the last page.	Bates number for the TIFF image of the last page.	Bates number for the TIFF image of the last page or, if spreadsheets/PowerPoints are not TIFFed, the Bates number of the placeholder page.	Bates number branded onto the native image file.	Bates number for the TIFF image of the last page.
Page Count		Number of pages in a document.	Number of pages in a document.	Number of pages in a document.	Number of pages in a document.	Number of pages in a document.

¹ The Producing Party will produce the fields contained in Appendix A to the extent available and technically achievable and to the extent required by this Order.

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Attach Beg	Text	Bates number of the first page of the parent document	“Attachments” include all embedded files other than images and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document is shown	“Attachments” include all embedded files other than images and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of parent document is shown.	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document is shown.	“Attachments” include all documents that were physically attached by clips, staples, or binding. Bates number of the first page of the parent document is shown.
Attach End	Text	Bates number of the last page of the last attachment	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the last page of the last attachment is shown	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the last page of the last attachment is shown.	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the last page of the last attachment is shown.	“Attachments” include all documents that were physically attached by clips, staples, or binding. Bates number of the first page of the parent document last page of the last attachment is shown.

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Attachment Range	Text	Bates number of the first page of the parent document and the last page of the last attachment.	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document and the last page of the last attachment is shown.	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of parent document and the last page of the last attachment is shown.	“Attachments” include all embedded files and all documents (including e-mails) to which this file was attached or in which it was embedded. Bates number of the first page of the parent document and the last page of the last attachment is shown.	“Attachments” include all documents that were physically attached by clips, staples, or binding. Bates number of the first page of the parent document and the last page of the last attachment is shown.
Attach Count		Number of attachments to, or documents embedded in, an email or edoc	Number of attachments to, or documents embedded in, an email or edoc.	Number of attachments to, or documents embedded in an email or edoc.	Number of attachments, or documents embedded into an email or edoc.	Number of attachments
Attach Title		Email attachments title list.	<blank>	<blank>	<blank>	<blank>
Application		Type of application used to generate the document.	Type of application used to generate the document.	Type of application used to generate the document.	Type of application used to generate the document.	<blank>
Document Category		The category of document (Email, Email Attachment, or E-Doc).	The category of document (Email, Email Attachment, or E-Doc).	The category of document (Email, Email Attachment, or E-Doc).	The category of document (Email, Email Attachment, or E-Doc).	”Physical”
File size		The size of the file including embedded attachments.	The size of the file including embedded attachments.	The size of the file including embedded attachments.	The size of the file including embedded attachments.	<blank>

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Custodian	Text	The name of the person who had primary control over the location from which the document was collected.	The name of the person who had primary control over the location from which the document was collected.	The name of the person who had primary control over the location from which the document was collected.	The name of the person who had primary control over the location from which the document was collected.	The name of the person maintaining the file from which the paper was obtained.
Duplicate Custodians	Paragraph	The names of the persons who had primary control over the locations from which the unproduced duplicate copies of the documents were collected.	The names of the persons who had primary control over the locations from which the unproduced duplicate copies of the documents were collected.	The names of the persons who had primary control over the locations from which the unproduced duplicate copies of the documents were collected.	The names of the persons who had primary control over the locations from which the unproduced duplicate copies of the documents were collected.	<blank>
Sender Combined	Paragraph	“From” field.	<blank>	<blank>	<blank>	<blank>
Addressee Combined	Paragraph	“To” field.	<blank>	<blank>	<blank>	<blank>
CC	Paragraph	“CC” field.	<blank>	<blank>	<blank>	<blank>
BCC	Paragraph	“BCC” field.	<blank>	<blank>	<blank>	<blank>
Email Subject	Paragraph	“Subject” field.	<blank>	<blank>	<blank>	<blank>
Email Sent Date ²	Date	The date and time the message was sent.	<blank>	<blank>	<blank>	<blank>

² When a metadata field includes a date, the date shall be provided in the following format: mm/dd/yyyy. When a metadata field includes a time, the time shall be provided in the following format: hh:mm:ss AM. eDiscovery Providers should take into account different geographical expressions of dates (e.g., MM/DD/YY vs DD/MM/YY) to meet these production specifications.

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Message ID	Text	For e-mails in Microsoft Outlook, the “Message ID” field; For e-mail stored in Lotus Notes, the UNID field.	<blank>	<blank>	<blank>	<blank>
Email Conversation Index		ID used to tie together e-mail threads.	<blank>	<blank>	<blank>	<blank>
Hash	Paragraph	The hash value calculated using commercially acceptable methods and based on all addresses, sent date/time, subject line, body, attachment names, and optionally attachment count	The hash value calculated using commercially acceptable methods when the file was collected (or, alternatively, when it was processed into the review database).	The hash value calculated using commercially acceptable methods when the file was collected (or, alternatively, when it was processed into the review database).	The hash value calculated using commercially acceptable methods when the file was collected (or, alternatively, when it was processed into the review database).	<blank>
File Name	Paragraph	The name of the file.	The name of the file.	The name of the file.	The name of the file.	<blank>
Duplicate Custodians File Name (pending further discussion between the Parties) ³	Paragraph	<blank>	The names of the unproduced duplicate copies of the files.	The names of the unproduced duplicate copies of the files.	The names of the unproduced duplicate copies of the files.	<blank>

³ Pursuant to the ESI Protocol, the Parties will continue to meet and confer to assess whether it is feasible to provide this field.

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
DocTitle		Internal file Title property.	Internal file Title property.	Internal file Title property.	Internal file Title property.	<blank>
Directory Path ⁴	Paragraph	The full directory path, including file name, of the mail file, e.g., PST, from which the email was obtained	The name of the folder from which the file was obtained, including any parent folders.	The name of the folder from which the file was obtained, including any parent folders	The name of the folder from which the file was obtained, including any parent folders.	The title of the folder in which the document was kept, unless folder cover was scanned prior to scanning of folder contents
Folder Path	Paragraph	The name of the email folder from which the email was obtained, including any parent email folders ⁵				
Duplicate Custodians Directory Path	Paragraph	The full directory paths, including file names, of the mail files, e.g., PSTs, from which the unproduced duplicate copies of the emails were obtained	The names of the folders from which the unproduced duplicate copies of the files were obtained, including any parent folders.	The names of the folders from which the unproduced duplicate copies of the files were obtained, including any parent folders	The names of the folders from which the unproduced duplicate copies of the files were obtained, including any parent folders.	<blank>
Duplicate Custodians Folder Path	Paragraph	The names of the email folders from which the unproduced duplicate copies of the emails were obtained, including any parent email folders ⁶	<blank>	<blank>	<blank>	<blank>
Doc extension		The file extension of a document.	The file extension of a document.	The file extension of a document.	The file extension of a document.	<blank>

⁴ For the Directory Path and Folder Path fields (and Duplicate Custodians Directory Path and Folder Path fields) the FCA defendants will provide a single combined “Path” field, which will contain both the directory path and e-mail folder path information.

⁵ Pursuant to the ESI Protocol, the United States need not provide this information.

⁶ Pursuant to the ESI Protocol, the United States need not provide this information.

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
File_Path	Paragraph	The path to the native file on the production media (if it is being provided).	The path to the native file on the production media (if it is being provided).	The path to the native file on the production media (if it is being provided)..	The path to the native file on the production media (if it is being provided).	<blank>
Text_Path	Paragraph	The path to the extracted text/OCR file on the production media.	The path to the extracted text/OCR file on the production media.	The path to the extracted text/OCR file on the production media.	The path to the extracted text/OCR file on the production media.	The path to the extracted text/OCR file on the production media.
Last Modified Date		<blank>	Internal file property: the most recent date when the e-doc was modified.	Internal file property: the most recent date when the e-doc was modified.	Internal file property: the most recent date when the e-doc was modified.	<blank>
Last Modified Time		<blank>	Internal file property: the most recent time when the e-doc was modified.	Internal file property: the most recent time when the e-doc was modified.	Internal file property: the most recent time when the e-doc was modified.	<blank>
Last Modified By		<blank>	Internal file property: the last person who modified the e-doc.	Internal file property: the last person who modified the e-doc.	Internal file property: the last person who modified the e-doc.	<blank>
Author		<blank>	Internal file property: Person who created the e-doc.	Internal file property: Person who created the e-doc.	Internal file property: Person who created the e-doc.	<blank>
Redacted		Identifies whether the document is redacted.	Identifies whether the document is redacted.	Identifies whether the document is redacted.	Identifies whether the document is redacted.	Identifies whether the document is redacted.
Created Date		<blank>	Internal file property: Date when the e-doc was created.	Internal file property: Date when the e-doc was created.	Internal file property: Date when the e-doc was created.	<blank>
Created Time		<blank>	Internal file property: Time when the e-doc was created.	Internal file property: Time when the e-doc was created.	Internal file property: Time when the e-doc was created.	<blank>

Name of Field	Type of field	Contents ¹				
		E-mail	Word Processing, PDFs, or other file types (e.g., CAD)	Spreadsheets and PowerPoints	Digital Photos	Paper
Received Date		Date when email was received.	<blank>	<blank>	<blank>	<blank>
Received Time		Time when email was received.	<blank>	<blank>	<blank>	<blank>
Time Zone Offset		If time zone is not normalized to UTC, local time relative to UTC (e.g., Eastern time is -4 for part of the year and -5 for part of the year)	If time zone is not normalized to UTC, local time relative to UTC (e.g., Eastern time is -4 for part of the year and -5 for part of the year)	If time zone is not normalized to UTC, local time relative to UTC (e.g., Eastern time is -4 for part of the year and -5 for part of the year)	If time zone is not normalized to UTC, local time relative to UTC (e.g., Eastern time is -4 for part of the year and -5 for part of the year)	<blank>
Last Print Date		<blank>	Internal file property: Last time when the e-doc was printed.	Internal file property: Last time when the e-doc was printed.	Internal file property: Last time when the e-doc was printed.	<blank>
Confidentiality Level	Text	Level of confidentiality assigned	Level of confidentiality assigned	Level of confidentiality assigned	Level of confidentiality assigned	Level of confidentiality assigned
Producing Party	Text	Agency (US) or Entity (Defendants) from whom email was collected	Agency (US) or Entity (Defendants) from whom documents were collected	Agency (US) or Entity (Defendants) from whom documents were collected	Agency (US) or Entity (Defendants) from whom documents were collected	Agency (US) or Entity (Defendants) from whom documents were collected